

SECTION 122(h)(1) AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS

IN THE MATTER OF:)	AGREEMENT FOR RECOVERY
)	OF PAST RESPONSE COSTS
Gulf State Utilities - North Ryan Street)	
Superfund Site)	U.S. EPA Region 6
Lake Charles, Calcasieu Parish, Louisiana)	CERCLA Docket No. 06-10-12
)	
Entergy Gulf States Louisiana, L.L.C.)	PROCEEDING UNDER SECTION
Entergy Texas, Inc.)	
Settling Parties)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Superfund Division Director.
2. This Agreement is made and entered into by the EPA and Entergy Gulf States Louisiana, L.L.C. and Entergy Texas, Inc. (collectively "Settling Parties"). The Settling Parties consent to and will not contest the EPA's authority to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Gulf State Utilities - North Ryan Street Superfund Site ("Site") located in Lake Charles, Calcasieu Parish, Louisiana. The EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
4. In response to the release or threatened release of hazardous substances at or from the Site, the EPA incurred response costs at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.
5. In performing response action, EPA has incurred response costs at or in connection with the Site.
6. The EPA alleges that the Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.
7. The EPA and Settling Parties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.



III. PARTIES BOUND

8. This Agreement shall be binding upon the EPA and the Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status of the Settling Parties, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Parties' responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

- a. "Agreement" shall mean this Agreement and any attached appendices. In the event of a conflict between this Agreement and any appendix, the Agreement shall control.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- f. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.
- g. "Parties" shall mean the EPA and the Settling Parties.
- h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through January 31, 2011 plus accrued Interest on all such costs through such date.
- i. "Section" shall mean a portion of this Agreement identified by a Roman numeral.
- j. "Settling Parties" shall mean Entergy Gulf States Louisiana, LLC, and Entergy Texas, Inc.

k. "Site" shall mean the North Ryan Street Superfund site, encompassing approximately 19 acres, located at 303 North Ryan Street, in Lake Charles, Calcasieu Parish, Louisiana, at coordinates 30 degrees, 14 minutes, 27 seconds north latitude, and 93 degrees, 13 minutes, 6 seconds west longitude.

l. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

10. Within 30 days of the effective date of this Agreement, Settling Parties shall pay to the EPA \$275,000.

11. Payment shall be made to the EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 06Z6, and the EPA docket number for this action. EFT payments shall be directed to the following:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

12. At the time of payment, Settling Parties shall also send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 06Z6 and the EPA docket number for this action.

13. The total amount to be paid pursuant to Paragraph 10 shall be deposited in the EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH AGREEMENT

14. Interest on Late Payments. If the Settling Parties fail to make any payment required by Paragraph 10 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

15. Stipulated Penalty.

a. If any amounts due to the EPA under Paragraph 10 are not paid by the required date, Settling Parties shall be in violation of this Agreement and shall pay to the EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 14, \$1,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by the EPA. All payments to the EPA under this Paragraph shall be identified as

"stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the Settling Party making payment, the Site name, the EPA Region and Site Spill ID Number 06Z6, and the EPA Docket Number for this action. Settling Party shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

c. At the time of each payment, the Settling Parties shall also send notice that payment has been made to the EPA in accordance with Section XIV (Notices and Submissions). Such notice shall identify the EPA Region and Site Spill ID Number 06Z6 and the EPA Docket Number for this action.

d. Penalties shall accrue as provided in this Paragraph regardless of whether the EPA has notified the Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

16. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the EPA by virtue of the Settling Parties' failure to comply with the requirements of this Agreement, the failure or refusal to comply with the requirements of this Agreement shall subject the Settling Parties to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of the EPA, brings an action to enforce this Agreement, the Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Notwithstanding any other provision of this Section, the EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse the Settling Parties from payment as required by Section V or from performance of any other requirements of this Agreement.

VII. COVENANT NOT TO SUE BY EPA

18. Covenant Not to Sue by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), the EPA covenants not to sue or take administrative action against the Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by the EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Agreement). ~~This covenant not to sue is conditioned upon the satisfactory performance by the Settling Parties of their obligations under this Agreement. This covenant not to sue extends only to the Settling Parties and does not extend to any other person.~~

VIII. RESERVATIONS OF RIGHTS BY EPA

19. The EPA reserves, and this Agreement is without prejudice to, all rights against the Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by the EPA in Paragraph 18. Notwithstanding any other provision of this Agreement, the EPA reserves all rights against the Settling Parties with respect to:

- a. liability for failure of the Settling Parties to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

20. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTIES

21. The Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Louisiana, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

22. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

23. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

24. The EPA and Settling Parties agree that the actions undertaken by the Settling Parties in accordance with this Agreement do not constitute an admission of any liability by the Settling Parties. The Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

25. The Parties agree that the Settling Parties are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

26. The Settling Parties agree that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, they will notify the EPA in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Parties also agree that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, they will notify the EPA in writing within 10 days of service of the complaint or claim upon it. In addition, the Settling Parties shall notify the EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

27. In any subsequent administrative or judicial proceeding initiated by the EPA, or by the United States on behalf of the EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by the EPA set forth in Section VII.

XI. SITE ACCESS

28. The Settling Parties shall, commencing on the Effective Date of this Agreement, provide the EPA and the State of Louisiana and their representatives, including contractors, with access at all reasonable times to the Site, or to such other property owned and/or operated by the Settling Parties, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

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- a. Monitoring, investigation, removal, remedial or other activities at the Site;
 - b. Verifying any data or information submitted to the United States [or the State];
 - c. Conducting investigations relating to contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Settling Parties or their agents, consistent with Section XII (Access to Information); and

g. Assessing Settling Parties' compliance with this Agreement.

29. Notwithstanding any provision of this Agreement, the EPA and the State retain all of their access authorities and rights, as well as all of its their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. ACCESS TO INFORMATION

30. The Settling Parties shall provide to the EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site that were not previously provided to the EPA, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

31. Confidential Business Information and Privileged Documents.

a. The Settling Parties may assert business confidentiality claims covering part or all of the records submitted to the EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by the EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to the EPA, or if the EPA has notified the Settling Parties that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to the Settling Parties.

b. The Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Parties assert such a privilege in lieu of providing records, they shall provide the EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to the EPA in redacted form to mask the privileged information only. The Settling Parties shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

32. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

33. Until ten (10) years after the effective date of this Agreement, the Settling Parties shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

34. After the conclusion of the 10-year document retention period in the preceding paragraph, the Settling Parties shall notify the EPA at least 90 days prior to the destruction of any such records and, upon request by the EPA, the Settling Parties shall deliver any such records to the EPA. The Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Parties assert such a privilege, they shall provide the EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to the EPA in redacted form to mask the privileged information only. The Settling Parties shall retain all records that they claim to be privileged until the EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

35. The Settling Parties hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. NOTICES AND SUBMISSIONS

36. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the EPA and the Settling Parties.

As to the EPA:

Casey Lockett-Snyder
Remedial Project Manager
U.S. Environmental Protection Agency, Region 6, 6SF-RL
1445 Ross Avenue
Dallas, TX 75202
214-665-7393
luckett.casey@epa.gov

As to the Settling Party:

Jeff Spillyards, Manager
Environmental Management
Entergy
425 West Capitol
Little Rock, Arkansas 72201
501-377-3951
jspilly@entergy.com

XV. INTEGRATION

37. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

XVI. PUBLIC COMMENT

38. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

39. The Attorney General or his/her designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVIII. EFFECTIVE DATE

40. The effective date of this Agreement shall be the date upon which the EPA issues written notice that the public comment period pursuant to Paragraph 38 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By: 

Pam Phillips
Acting Director,
Superfund Division

Date: 12/14/12

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of
CERCLA Docket No. 06-10-12 relating to the North Ryan Street Superfund Site in Lake Charles,
Calcasieu Parish, Louisiana:

By: Sallie T. Rainer
Sallie T. Rainer
President and CEO
Entergy Texas, Inc.

Date: July 16, 2012

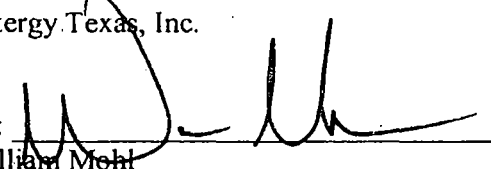
By: _____
William Mohl
President and CEO
Entergy Gulf States Louisiana, L.L.C.

Date: _____

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of
CERCLA Docket No. 06-10-12 relating to the North Ryan Street Superfund Site in Lake Charles,
Calcasieu Parish, Louisiana:

By: _____
Sallie T. Rainer
President and CEO
Entergy Texas, Inc.

Date: _____

By:  _____
William Mohl
President and CEO
Entergy Gulf States Louisiana, L.L.C.

Date: 7/13/12